

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re: LISA M. WEBER,

Debtor.

BKY. No.: 03-61445
Chapter 13

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: LISA M. WEBER AND HER ATTORNEY, KENNETH J. KLUDT,
ATTORNEY AT LAW, 1001 CENTER AVE., STE. C, MOORHEAD,
MN 56560.

1. Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Finance Corporation, its successors and assigns, by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 28, 2004 at 1:00 P.M. in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, in Fergus Falls, Minnesota, or as soon as counsel may be heard before The Honorable Dennis D. O'Brien, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later September 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was originally filed as a Chapter 7 case on November 13, 2003 and converted to a Chapter 13 case on March 15, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Modified Chapter 13 Plan confirmed on June 22, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtor is in default on said payments from June 20, 2004 to date in the amount of \$291.48 per month, plus post-petition late charges.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Finance Corporation, its successors and assigns, by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 7, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(F0396)

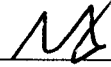
THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 7, 2004

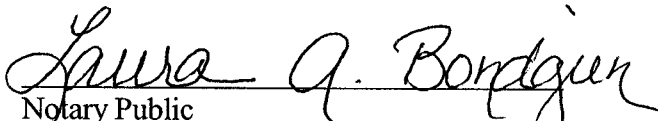
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

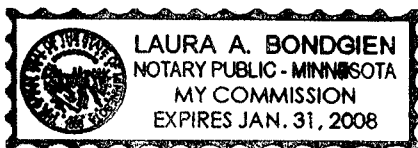
By: 
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

7th day of September, 2004.


Notary Public



No. 29859 Date FEB 25 2002

Registration Tax Hereon of \$ 55.89 paid

Betty J. Sweetland
County Treasurer

Countersigned:
Lou Johnson
County Auditor

58-877-0250

MORTGAGE

OFFICE OF COUNTY RECORDER
COUNTY OF CLAY, MINNESOTA

THIS INSTRUMENT WAS CERTIFIED, FILED
AND/OR RECORDED ON 02-25-2002 AT
2:55 PM

AS DOCUMENT NO.

557352

Bonnie Reher
J. BONNIE REHER, CLAY COUNTY RECORDER

Loan No: 02010182

THIS MORTGAGE is made this 14th day of February, 2002, between the Mortgagor,
Dale L. Weber and Lisa M. Weber, husband and wife

chg UST

Goleta National Bank

existing under the laws of California
445 Pine Ave., Goleta, CA 93117

(herein "Borrower"), and the Mortgagee,

, a corporation organized and
, whose address is

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S.\$ 24,300.00 (herein "Lender").
is evidenced by Borrower's note dated February 14, 2002 and extensions and renewals thereof (herein
"Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and
payable on February 20, 2017

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment
of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the
performance of the covenants and agreements of Borrower herein contained, Borrower does hereby grant and convey to Lender,
with power of sale, the following described property located in the County of Clay
State of Minnesota:
Lot Five, in Block Two, of Village Green Fourth Addition to the City of
Moorhead, situate in the County of Clay and the State of Minnesota.

which has the address of. 3611 Village Green Lane, Moorhead
[Street]

[City]

Minnesota 56560 (herein "Property Address");
[ZIP Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights,
appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and
all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred
to as the "Property."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey
the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower
warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness
evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to
Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum
(herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development
assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of
yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any,
all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable
estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes
such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

INITIALS DLW. INITIALS Lmw INITIALS INITIALS

MINNESOTA - SECOND MORTGAGE - 1/80
FNMA/FHLMC UNIFORM INSTRUMENT

Page 1 of 4

RZDOTMNI 12/96

HMS 60126908

Loan No: 02010182

5573L 4-4

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- | | | |
|--|---|--|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Bi-Weekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> V.A. Rider | <input type="checkbox"/> Other(s) [specify] | |

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Witness

Dale L. Weber (Seal)
Borrower

Witness

Lisa M. Weber (Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Sign Original Only)

STATE OF MINNESOTA, ND Cass County ss:

On this 14th day of FEBRUARY, 2002, before me appeared Dale L. Weber and Lisa M. Weber, husband and wife

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _____, to me they executed the same as THEIR free act and deed.

My Commission Expires:

(Seal)

Timothy J. Kremer
Notary Public

[Space Below This Line Reserved For Lender and Recorder]

TIMOTHY J. KREMER
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires OCT. 18, 2003

This instrument drafted by Leonard Street and DeInard, P.A., 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

WHEN RECORDED MAIL TO:
Goleta National Bank

445 Pine Ave.
Goleta, CA 93117

D.L.W.
Low

Prepared By: Goleta National Bank
445 Pine Avenue

Goleta, CA. 93117

By: Ryan Kelly

Phone # 805-681-3366

Loan No: 7302010182

Please Return To:

OFFICE OF COUNTY RECORDER
COUNTY OF CLAY, MINNESOTA

THIS INSTRUMENT WAS CERTIFIED, FILED
AND/OR RECORDED ON 05-31-2002 AT
12:36 PM

AS DOCUMENT NO.

561192

Bonnie Rehder
J. BONNIE REHDER, CLAY COUNTY RECORDER

Household Finance
P.O. Box 1247
Elmhurst, IL 60126-9839

58-817-0250

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned, Goleta National Bank, holder of a Mortgage (herein "Assignor") whose address is 445 Pine Avenue, Goleta, CA 93117 does hereby grant, sell, assign, transfer and convey, unto

Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Finance Corporation, its successors and assigns, 64318 Miller Rd., P.O. Box 2026, Flint, MI 48501-2026

(herein "Assignee"), all beneficial interest under a certain Mortgage dated February 14, 2002, made and executed by Dale L. Weber and Lisa M. Weber, husband and wife upon the following described property situated in Clay County, State of MN as more specifically described as

Lot Five, in Block Two, of Village Green Fourth Addition to the City of Moorehead, situate in the County of Clay and the State of Minnesota.

such Mortgage having been given to secure payment of \$24,300.00 which Mortgage is of record as of ~~TBD~~ 2-25-2002 in Book, Volume, Folio, or Liber No. ~~TBD~~ at Page ~~TBD~~ (or as Instrument No. ~~TBD~~ 557352) of the Official Records of Clay County, State of MN together with the Note(s) and obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.

TO HAVE AND TO HOLD, the same unto Assignee, its successors and assigns, forever, subject only to the terms and conditions of the above described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on March 18, 2002

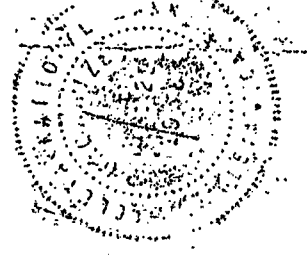
APN: 58-817-0250

Goleta National Bank

B.R. Merry
B.R. Merry, Sr. Vice President

Ryan Kelly
Ryan Kelly, Witness

Jeff Martin
Jeff Martin, Witness



MERS #: 1000460-000 6126908-4
PH #: 1-888-879-6377

WHEN RECORDED, MAIL AND RETURN TO:
HOUSEHOLD MORTGAGE SERVICES
577 LAMONT ROAD
ELMHURST, IL 60126

HMS

6126908

(B)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re: LISA M. WEBER,

Debtor.

BKY. No.: 03-61445
Chapter 13

AFFIDAVIT OF MOVANT'S
VICE PRESIDENT

STATE OF MINNESOTA)

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc. in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, I have had the opportunity to review the mortgage account of the Debtor.


2. That pursuant to the Modified Chapter 13 Plan confirmed on June 22, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtor is in default on said payments from June 20, 2004 to date in the amount of \$291.48 per month, plus post-petition late charges.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

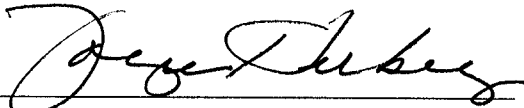
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

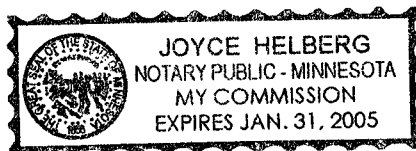
Dated: September 7, 2004

By: 
Scott Barnes
Vice President
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Subscribed to and sworn before me this

7th day of September, 20 04.





UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re: LISA M. WEBER,

Debtor.

BKY. No.: 03-61445
Chapter 13

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtor originally filed her petition herein on November 13, 2003 under Chapter 7 of the Federal Bankruptcy Code and converted to a Chapter 13 case on March 15, 2004. The Debtor listed real property located in Clay County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot Five, in Block Two, of Village Green Fourth Addition to the City of Moorhead.

The amount due under said mortgage loan is approximately \$23,000.00. Pursuant to the Modified Chapter 13 Plan confirmed on June 22, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan. The Debtor is in default on said payments from June 20, 2004 to date in the amount of \$291.48 per month, plus post-petition late charges.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has failed to meet her contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtor’s inability to make payments toward her loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor’s offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 7, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(F0396)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re: LISA M. WEBER,

BKY. No.: 03-61445
Chapter 13

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on September 8, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Michael J. Farrell
Trustee
P.O. Box 519
Barnesville, MN 56514

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Lisa M. Weber
3611 Village Green Ln.
Moorhead, MN 56560

Kenneth J. Kludt
Attorney at Law
1001 Center Ave., Ste. C
Moorhead, MN 56560

Household Financial Services, Inc.
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Washington Mutual
P.O. Box 3139
Milwaukee, WI 53201-3139

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 8, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

(F0396)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re: LISA M. WEBER,

Debtor.

BKY. No.: 03-61445
Chapter 13

ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 28, 2004 in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, in Fergus Falls, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Finance Corporation, its successors and assigns, was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot Five, in Block Two, of Village Green Fourth Addition to the City of Moorhead,
Clay County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Dennis D. O'Brien
Judge of U.S. Bankruptcy Court